

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Crim. No. 3:11CR248(SRU)
	:	
JOANNE OSMOLIK,	:	April 24, 2012
	:	
Defendant.	:	

**GOVERNMENT’S RESPONSE TO DEFENDANT’S MEMORANDUM
IN AID OF SENTENCING**

I. INTRODUCTION

Joanne Osmolik looted Latex International for over \$1.75 million. Even though the government provided her long ago with the detail supporting each fraudulent expenditure, and she thereafter entered into a plea agreement in which she agreed that the loss amount was \$1,777,791, Osmolik now claims that she “dispute[s] the loss amount with respect to the fraudulent conduct.” Osmolik Mem. at 2. Amazingly, though she now disputes what she agreed to before this Court, and now stands in violation of her conditions of release pending sentencing, she wants to be sentenced to non-custodial sentence for an audacious theft of over \$1.75 million. But contrary to Osmolik’s position, the goals set forth in 18 U.S.C. § 3553(a) cannot be accomplished by a sentence of probation. To the contrary, a sentence of probation would not punish Osmolik, specifically deter her from stealing again, or generally deter others from engaging in similar crime sprees.

On the other hand, a guidelines sentence of 33 to 41 months would accomplish these goals. A guidelines sentence would provide general deterrence to anyone who might think of embezzling as much money as Osmolik embezzled here. Indeed, Osmolik does not give a single

reason as to how a light sentence would serve the goal of general deterrence here. Osmolik Mem. at 9. The Court should sentence Osmolik to a well-deserved sentence of 33 to 41 in prison.

II. THE OFFENSE CONDUCT

The PSR accurately summarizes the offense conduct at paragraphs 5 through paragraph 14 of the PSR.

From about June 2005 until October 2010, Osmolik was employed at Latex International (“Latex”) in Shelton, Connecticut. When Osmolik left Latex in October 2010, she was the Vice President for Human Resources and Administration. Osmolik worked under Kevin Coleman, the CEO of Latex.

From October 2008 to November 2010, Osmolik and Coleman participated in a scheme to defraud Latex out of money and property. Osmolik and Coleman fraudulently enriched themselves by converting and embezzling corporate funds belonging to Latex International and using those funds for substantial personal expenditures. The scheme included, but was not limited to, misusing corporate credit cards and expense accounts and concealing their fraudulent use from others. Osmolik and Coleman charged substantial personal expenditures on corporate credit cards, including American Express (“AMEX”) and others, belonging to Latex.

Osmolik and Coleman prepared expense reports in order to obtain and use Latex corporate funds to pay off the amount owed on the credit cards for their personal expenditures and to use for other personal expenditures not charged to corporate credit cards. Osmolik and Coleman affirmatively concealed from Latex that they were using corporate funds to pay for substantial personal expenditures.

Coleman directed Osmolik to prepare expense reports under the name of an employee working at Latex (hereinafter referred to as “Employee #1”) in order to conceal the expenses of Coleman and Osmolik, and the nature of those expenses, from the finance department at Latex. Coleman instructed Osmolik to destroy expense reports so as to conceal their fraudulent nature from others at Latex. Osmolik carried out those instructions and destroyed the records.

In the two-year period from November 2008 to November 2010, Osmolik charged approximately \$1,020,329 in personal expenditures on the Latex American Express card assigned to her. She also received approximately \$531,655 in fraudulent expense report payments, above and beyond what was paid to American Express for her fraudulent personal charges. Altogether, Osmolik embezzled approximately \$1,777,791 from Latex International, which does not include the similarly substantial personal expenditures incurred by Coleman.

Osmolik and Coleman used interstate wire communications in furtherance of the conspiracy, including email, the internet, and interstate and international telephone calls, and the use of interstate wires in furtherance of the scheme was reasonably foreseeable to both of them. Osmolik conducted numerous transaction on the internet in furtherance of the scheme, including, for example: (i) on December 12, 2009, CozyBoots.com for \$554.00, (ii) on January 6, 2010, Neiman Marcus Online for \$446.50, and (iii) on January 18, 2010, HomeDepot.com for \$2,118.94. On or about April 29, 2009, OSMOLIK caused an electronic funds transfer to occur in the amount of \$10,619.21 from Wachovia Bank in New Haven, Connecticut to Wachovia Bank in Orlando, Florida (Wachovia sequence number 3237090414), which funds were obtained from Latex and used by Osmolik as the result her submission to Latex of a fraudulent expense voucher in the name of Employee #1.

III. SENTENCING GUIDELINES

The government agrees with the PSR's calculations of Davis's sentencing guidelines.

The PSR calculates Davis's guidelines range to be 33 to 41 months. PSR at ¶ 71. The guidelines are correctly calculated at paragraphs 19 to 27 of the PSR:

Base offense level (§ 2B1.1(a)(1)):	7
Loss of more than \$1,000,000 (§ 2B1.1(b)(1)(I)):	<u>+16</u>
Adjusted Offense Level:	= 23
<u>Acceptance of Responsibility</u>	<u>- 3</u>
Total Offense Level:	= 20 (33 - 41 months)

The government agrees with the PSR's fine range, ¶ 77, and that restitution of \$1,777,791 is mandatory. PSR at ¶ 79.

IV. OSMOLIK SHOULD BE SENTENCED WITHIN THE GUIDELINES RANGE.

A sentence within the guidelines range is warranted here and will promote the sentencing goals of 18 U.S.C. § 3553(a).

A. Application of the 3553(a) Factors

Section 3553(a) provides that the sentencing "court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection," and then sets forth seven specific considerations:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established [in the Sentencing Guidelines];
- (5) any pertinent policy statement [issued by the Sentencing Commission];
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

Here, a review of the § 3553(a) factors confirms that a Guidelines sentence between 33 and 41 months is appropriate.

1. The Nature and Circumstances of the Offense

The nature of the offense is serious: Osmolik fraudulently converted over \$1.75 million in Latex money and property to herself and for her own personal benefit. The circumstances of the offense are nothing short of appalling: Osmolik and Coleman went about “secretly siphoning off millions of dollars for their extravagant lifestyles, driving the company to the brink of bankruptcy and concealing their theft from others.” Letter, James I. Glasser to Eric J. Glover, dated April 24, 2012, at page 2 (hereinafter “Latex Victim Letter”) (attached hereto as Exhibit A).

The long list of items that will be forfeited in connection with her conviction reveals the profligacy of her fraudulent spending of company money. It should be noted that, like Coleman, Osmolik did not undertake her crime spree out of need. She made \$195,704 in the year 2010. Rather, she undertook her lengthy crime spree out a crude desire to provide herself and her family with a lifestyle that she could not come by legally. PSR at ¶ 67.

2. History and Characteristics of Osmolik

Osmolik’s personal history and characteristics do not provide her with any mitigation. She appears not to have been a supportive or collegial employee at Latex, either to the owners of

the company or to the employees of the company. As the Latex victim letter states, Osmolik's "concern for the employees of Latex [was] non-existent." Letter at page 2. Along with Coleman, she threatened to fire any subordinate that they thought would expose them. *Id.* "She stepped on the people and ruined lives, simply for own benefit. Osmolik terrorized her underlings and had authority to carry out on her threats. She was able to carry out and conceal her fraud only by being a bully." Latex Victim Letter at page 4.

Osmolik appears to have little regard for complying with the law. Even now that she has pled guilty, Osmolik still will not conform her behavior to the orders of this Court. Osmolik is and has been in violation of her conditions of release, as she has not maintained contact with the Probation Officer as required.

3. The Guidelines Sentence Would Satisfy the Goals of General Deterrence.

A Guidelines term of incarceration here satisfies the objectives of 18 U.S.C. § 3553(a) because any non-incarceratory sentence would serve only to undermine, not advance, the goal of general deterrence. Osmolik's suggestion that she should be allowed to be allowed to walk out of the courtroom with probation after engaging in an audacious theft of more than \$1.75 million – and after assisting Coleman in his theft of a similar amount of money – is nothing short of outrageous. It would send a signal that one can engage in long-term, high-dollar theft and suffer little in terms of consequences, even when caught red-handed. Her mere suggestion of it shows that she still does not understand the seriousness of her conduct.

This Court can— and should— send a strong message that persons like Osmolik, who are handsomely compensated in corporate positions but still chose to steal to fund a lavious lifestyle, will be punished by imprisonment for a meaningful period of time.

Osmolik discusses at length the purported relationship between her age (52) and the likelihood, or claimed lack thereof, that she will recidivate. Osmolik Mem. at 10-13. Yet it is not at all clear that giving Osmolik a light sentence in this case would not serve to foster a belief on her part that she can engage in large-scale fraud with impunity. In any event, specific deterrence is only one of the goals of 18 U.S.C. § 3553(a), and it is paramount that a guidelines sentence be imposed in this case to promote the goal of general deterrence.

4. The Need to Promote Respect for the Law and to Provide Just Punishment.

A guidelines sentence of 33 to 41 months will promote respect for the law and provide just punishment. Osmolik's crime cries out for a meaningful term of imprisonment, and a sentence within the guidelines range will provide that.

5. Full Restitution is Mandatory and Should Be Ordered.

Under the Mandatory Victim Restitution Act ("MVRA"), 18 U.S.C. § 3663A and 3664, this Court is required to impose an order of restitution in this case in favor of Latex, the victim of the defendant's crime, for the full amount of its losses, without consideration of the defendant's ability to pay that amount. 18 U.S.C. § 3664(f)(1)(A) ("In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant."); *see United States v. Ekanem*, 383 F.3d 40, 44 (2d Cir. 2004); *United States v. Johnson*, 378 F.3d 230, 244-45 (2d Cir. 2004); *see also* U.S.S.G. § 5E1.1 (directing the sentencing court to enter a restitution order if there is an identifiable victim).

Here, the Court should impose an order of full restitution in the amount of \$1,777,791. Osmolik agreed to that amount in the plea agreement, and agreed to that amount when

questioned by this Court at the guilty plea colloquy. She agreed to that amount after having had access to the detail underlying her fraudulent expenditures. Her claim that there is a “question” as to “what the appropriate amount is,” and that “some of the charges were legitimate business expenses,” constitutes a breach of her plea agreement. She should not be heard on an issue to which she readily agreed in order to get other benefits of the plea agreement.

B. Osmolik’s Family Circumstances Are Not Extraordinary.

Osmolik appears to claim that a sentence of imprisonment “could” have a negative effect upon her 80 year-old mother. Osmolik Memo. at 7. But she has provided no support for her claim that she is her mother’s primary caretaker. In any event, Osmolik’s family circumstances are not exceptional and are far outweighed by other considerations in the case, including the seriousness of her offense.

The Guidelines provide that “family ties and responsibilities are *not ordinarily relevant* in determining whether a departure may be warranted.” U.S.S.G. § 5H1.6 (Policy Statement) (emphasis added). Indeed, separation from family members is “inherent in the punishment of incarceration.” *United States v. Tejeda*, 146 F.3d 84, 87 (2d Cir. 1998) (citation omitted). Thus, a departure based on family circumstances is disfavored and “must be reserved for situations that are truly extraordinary.” *United States v. Walker*, 191 F.3d 326, 338 (2d Cir. 1999); *see also United States v. Smith*, 331 F.3d 292, 294 (2d Cir. 2003) (“Because the Guidelines disfavor departure based on family responsibilities, such a departure is not permitted except in extraordinary circumstances.”). This is not such a case.

The Second Circuit underscores that a departure for family circumstances is rarely applied, and only where the defendant has a unique and irreplaceably vital role in the

caretaking of minor or disabled family members. *Compare Smith*, 331 F.3d at 294 (reversing, under abuse-of-discretion standard, family circumstances departure where defendant was not the sole caregiver or financial supporter of two-year-old son) and *United States v. Madrigal*, 331 F.3d 258, 260 (2d Cir. 2003) (reversing, under abuse-of-discretion standard, family circumstances departure for sole caregiver of six children in the absence of evidence that defendant was the only person capable of providing adequate care) with *United States v. Johnson*, 964 F.2d 124, 128-30 (2d Cir. 1992) (no abuse of discretion to depart where defendant was “solely responsible for the upbringing of her three young children, including an infant, and of the young child of her institutionalized daughter”). Indeed, the Second Circuit has found that “the absence or presence of adults who can step in during the defendant’s incarceration to assist with caring and providing for the defendant’s dependents . . . is a central part of the extraordinary family circumstances inquiry.” *United States v. Huerta*, 371 F.3d 88, 95 (2d Cir. 2004); *see also United States v. Selioutsky*, 409 F.3d 114, 119 (2005) (departure not available “where other relatives could meet the family’s needs . . . or the defendant’s absence did not cause a ‘particularly severe’ hardship” (citation omitted)).

Here, while the defendant claims to be the primary caregiver for her mother, that does not, without more, make her eligible for the departure. The Court should consider the fact that her brother, Jeffrey, resides with her mother in Connecticut and is gainfully employed. PSR at ¶ 41. The presence and support of her brother to take care of her mother provides ample basis to deny the departure. *See Smith*, 331 F.3d at 294; *Madrigal*, 331 F.3d at 260; *United States v. Carrasco*, 313 F.3d 750, 756-57 (2d Cir. 2002) (reversing, under abuse-of-discretion standard, family circumstances departure for defendant with three children and an ill father; “being the father of three children is in no sense an exceptional circumstance”); *Tejeda*, 146 F.3d at 87-88

(reversing departure and explaining “the existence of a stable family (a wife and two children)—something that is by no means extraordinary—does not satisfy the ‘exceptional hardship’ criterion established by our precedents” (citation omitted)).

V. CONCLUSION

For the reasons set forth above, the Government respectfully requests that the defendant be sentenced to a term of imprisonment with the guidelines range, 33 to 41 months.

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UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Eric J. Glover
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April 24, 2012

Eric J. Glover
Supervisory Assistant U.S. Attorney
Office of the United States Attorney
157 Church Street
New Haven, Connecticut 06510

Re: Joanne Osmolik

Dear Mr. Glover:

As you are aware, I represent Latex International and have been assisting that company in connection with the investigation of frauds perpetrated on it by two of its former executives, Joanne Osmolik and Kevin Coleman. I want to thank you and the Special Agents of the FBI and the IRS-CI with whom you are working for your hard work in connection with the prosecution of this matter. Latex, as the victim, is grateful for your efforts.

The victim witness coordinator asked Latex if it wanted to bring information to the attention of the sentencing court. In response, management of Latex authored the below letter which I have cut-and-pasted into this letter:

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Latex International was founded in 1975 by Bill Coffey and Steve Kordiak as a start up operation. The Company has grown significantly since those early years with a lot of very hard work and dedication by its many loyal employees. Latex International currently employs 186 employees, the majority of which reside in Connecticut.

Latex International's very existence, along with the future of each and every employee, was jeopardized last year due to the greed and disturbing conduct of its former CEO, Kevin Coleman and former VP of Human Resources, Joann Osmolik. They independently embezzled from the company and its employees in excess of 1.95 million dollars, and 1.75 million dollars, respectively. The total, approaching \$4 million, taken over an 18 month period of time, brought the Company to the brink of financial ruin.

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This was a Company that was in the midst of a major expansion, sales were solid, the customer base was growing and the employees and staff thought the future to be bright and promising. All the while, Kevin Coleman and Joann Osmolik were secretly siphoning off millions of dollars for their extravagant lifestyle, driving the company to the brink of bankruptcy and concealing their theft from all others. Kevin Coleman was living a lavish lifestyle renting a million dollar beach house in Milford, driving a new XK Jaguar, buying hundreds of thousands of dollars of jewelry for various women, and purchasing cars and motorcycles to play with out of state and out of the country as well. This was ALL accomplished by the unauthorized use of company funds. Coleman lived the life of the carefree bachelor until the Company ran out of money. He was not repentant; he never stopped or turned himself in, he was caught due to the extremes that he and Osmolik sank to.

Joanne Osmolik was similarly profligate in her spending of company funds. She benefitted herself in innumerable ways, including lavish spending on herself and her family, unauthorized purchases designed to enrich herself and improve her living situation, including the purchase of motorcycles and other extravagances.

Coleman and Osmolik's concern for the employees of Latex were non-existent. The lengths to which they went to cover their tracks included Coleman having Osmolik destroy company records and Osmolik threatening to fire, or firing any subordinate that they thought might expose them. This was a long-term systematic conspiracy to steal and to abuse their power as CEO and VP respectively.

The owners and employees have suffered financially, emotionally, and in ways too numerous to explain to anyone not victimized in such a manner. It is despicable that good, decent, dedicated, and hard working people have been hurt and damaged through no fault of their own.

However, here are a few things we would like to detail for sentencing consideration:

- Due to the financial constraints, an entire shift was reduced, including 43 individuals who did nothing wrong. These employees lost their jobs entirely due to Coleman and Osmolik's greed.

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- The factory experienced shut downs while the Executive Team worked with Suppliers & COD terms due to the financial situation created by Coleman and Osmolik's embezzlement.
- Issues with Suppliers and cash constraints led to longer lead times to key customers resulting in lost sales.
- Factory repairs had to be pushed out, which again created downtime impacting all employees.
- Dramatic reduction in travel and training of customers was required due to financial constraints which resulted in lower sales, which impacted revenue, which continued to downward spiral the fragile recovery operation.
- The Company could not afford to advertise or market for all of 2011 due to financial constraints, which again, significantly impacted revenue.
- Inventory was reduced to substantially lower levels, impacting the Company's ability to service customers.
- Industry wide rumors and assumptions ran across the World that Latex might go Bankrupt.
- The Harrogate Plant in England had to be closed as a result of the cash shortage, more jobs lost, and the main expansion plan was terminated.
- The 401k plan was suspended and many other sacrifices were made by the existing employees to survive 2011. It was touch and go as to the future that all had once thought so bright.

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**The Company also has experienced in excess of \$300,000 in legal and professional fees due to Coleman and Osmolik's crimes (this includes hiring of a Forensic Audit Experts and attorney fees for many of issues detailed above), and was also penalized by the Bank \$250,000 for borrowing additional funds due to Coleman and Osmolik's greed. These are some of the direct and measurable financial effects.*

All of the issues above, result in current and future financial consequences equal, if not beyond, the \$4 million already stolen from the company, but what we find truly deplorable, is the abuse of trust by these two individuals. As the CEO of Latex International, Kevin Coleman had a very important responsibility to the Shareholders and to the Employees. Between 2007 and 2010 he was compensated \$1.5 million dollars, but that was not enough? No. He schemed with every breath he took and lied like only a true con man can – the kind you see on TV shows.

The people who were left in the aftermath of this disaster are victims. They were questioned by the Company, the FBI, and their colleagues repeatedly. No one in the Industry could really believe Coleman would do this. He was even hired within the Industry by a competitor while the investigation was under way, and proceeded to attack Latex and its employees from there, as the company struggled to survive his atrocities. Surely this could not be true, Coleman a thief and master con man? It is true, the employees and family that is "Latex" know this now. He has shown no remorse, we believe he simply has no moral compass. He most certainly would do this again given the opportunity.

Similarly, Joanne Osmolik fed at the company trough and enriched herself and the expense of the lives of others. She stepped on people and ruined lives, simply for her own benefit. Osmolik terrorized her underlings and had authority to carry out on her threats. She was able to carry out and conceal her fraud only by being a bully.

Therefore, we must ask for the benefit of all those he defrauded and hurt, the Victims of his crimes, that both Kevin Coleman and Joanne Osmolik be sentenced as severely as the law will allow. We also ask that the Court order restitution to the victim here, including the costs associated with investigating the fraud perpetrated by these defendants.

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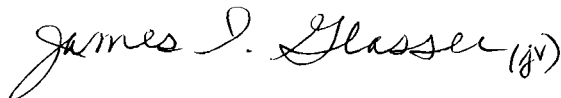
We thank the court for considering this letter and ask for an opportunity to address the court in-person at sentencing.

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Latex International seeks restitution from Ms. Osmolik and Mr. Coleman for the full extent of its losses, including the costs of investigations and its assistance to the United States in the investigation and prosecution of this matter, as permitted by statute. *See United States v. Amato*, 540 F.3d 153, 159-62 (2d Cir. 2008).

Eric, I thank you for considering the thoughts of the victim, and ask you to ensure that the Court receives a copy of this letter.

Sincerely,

A handwritten signature in cursive script that reads "James I. Glasser (jv)".

James I. Glasser

JIG:jv

cc: Honorable Stefan R. Underhill
Frank Riccio, Esq.
Robert Frost, Esq.